

STATE EMPLOYMENT
RELATIONS BOARD

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FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
April 16, 2007

In the Matter of:)
)
The City of Warren)
)
)
and)
)
)
Ohio Patrolmen's Benevolent Association)
(Communications Coordinators))
)

SERB Case No.
06-MED-10-1224

APPEARANCES

For the Union:

Mark Volchek, OPBA Attorney
Linda Briach, OPBA Bargaining Unit Representative

For the City of Warren:

Gary Cicero, City of Warren Director of Human Relations
Brian Massucci, City of Warren Personnel Supervisor

Fact Finder: Dennis M. Byrne

Background

The Fact Finding involves the City of Warren's Communication Coordinators represented by the Ohio Patrolmen's Benevolent Association (OPBA/Union) and the City of Warren (Employer). The parties held numerous negotiating sessions, but were unable to come to an agreement; consequently, they scheduled a Fact Finding. Prior to the Hearing, the Fact Finder attempted to mediate the dispute, and a number of issues were resolved. These issues included 1) shift differential pay, 2) longevity pay, 3) changes to the holiday article, and 4) life insurance. The parties also agreed on the effective date and termination date of the contract. The major remaining differences between the parties' positions are related to economic issues, although there are also three other unresolved matters. The open issues include 1) wages, 2) roll call pay, 3) Public Employee's Retirement System (PERS) payment pickup, 4) the amount of the uniform allowance, 5) issues surrounding the hours of work, 6) payment of an attendance bonus, and 7) space for a union office.

The Fact Finding Hearing was held on Tuesday March 27, 2007. The Hearing started at 10:00 A.M. at the City of Warren Community Services Building. The Hearing lasted for approximately three hours and ended a few minutes past 1:00 P.M. It should be noted that the parties agreed on a number of issues during their negotiation sessions, and those tentative agreements are included in the Fact Finder's recommendations by reference.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations in Rule 4117-9-05. The criteria are:

- (1) Past collectively bargained agreements, if any.

- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.
- (3) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards of public service.
- (4) The lawful authority of the public employer.
- (5) Any stipulations of the parties.
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment.

Introduction:

The underlying difference in the parties' positions relates to the Union's wage demand. However, to understand that difference, the bargaining history that led to the just expired contract needs to be examined. The parties were unable to come to an agreement on the wage bargain during the last round of negotiations. Consequently, they scheduled a Fact Finding. The Fact Finder Richard Pereles issued his report (Union Exhibit A) on November 17, 2004. This report recommended a three and one-half percent (3.5%) wage increase for each year of the prospective agreement. That is, a three and one-half percent (3.5%) increase for 2004, 2005, and 2006. The City rejected the Fact Finder's report, and the parties scheduled a conciliation hearing. That hearing was held on March 3, 2005, and the report was issued on March 10, 2005.

The State Employment Relations Board (SERB) guidelines for conciliation contain a "Fiscal Year Limitation on Compensation Awards." This limitation is found in paragraph 4117.14(G)(11) which states:

"Increases of compensation and other matters with cost implications awarded by the conciliator may be effective only at the start of the fiscal year next commencing after the date of the final offer settlement award; provided that if a

new fiscal year has commenced since the issuance of the board order to submit to a final offer settlement procedure, the awarded increases may be retroactive to the commencement of the new fiscal year.” (ORC 4117)

This means that a conciliator must be appointed in the fiscal year in which he/she recommends a wage increase. A conciliator cannot recommend a retroactive wage increase for a prior fiscal year unless the parties sign a retroactivity agreement.

The City rejected Fact Finder Pereles’s recommendations, and the Conciliator was not appointed until after January 1, 2005. Consequently, he was barred from issuing a wage recommendation for fiscal 2004. Since the fact-finding report recommended a three and one-half percent (3.5%) increase for fiscal 2004, the Union received no base rate increase in that year. It is not clear why the Conciliator was not appointed before the end of the 2004 fiscal year.

The City raised an objection to the Conciliator recommending a wage increase for fiscal 2004 based on ORC 4117.14(G)(11). The Union in an attempt to bypass the prohibition language found in 4117.14(G)(11) changed its demand from a yearly wage increase to a three and one-half percent (3.5%) lump sum payment prior to the conciliation hearing. The City argued that this was a new demand and objected to the Conciliator considering the demand. The Conciliator discussed the matter in his report and found that the Union’s position did not violate either 4117.14(G)(11) or the Fairborn decision (Fairborn Professional Firefighters Association v. City of Fairborn, 90 Ohio St.3d 170, 736 N.E.2d 5 (2000)), which is a decision relating to new demands made after fact finding but prior to conciliation. The Conciliator recommended a lump sum payment of three and one-half percent (3.5%) payable within thirty days of the issuance of his report, i.e., on or before April 10, 2005. In addition, he ordered the City to pay a three

and one-half percent (3.5%) wage increase in the second and third years of the prospective contract.

At this point the situation became even more contentious. The City's offer in the conciliation hearing was for wage increases of three and one-half percent (3.5%) in the first and second year of the contract. That is, the City offered three and one-half percent (3.5%) for 2004 and 2005. This was the offer submitted to the Conciliator even though the City argued that the raise could not be granted for 2004. This implies that the Union membership would receive no raise in 2004 but that their base rate would be seven percent (7.0%) percent higher in 2005. In the third year the City offered two percent (2.0%). The Union demanded a lump sum payment equal to three and one-half percent (3.5%) of the base wage in 2004, and a seven percent (7.0%) increase in 2005 followed by a three and one-half percent (3.5%) increase in 2006. The Union's position was that the lump sum payment would not be included in the base wage and that any future increases would always be smaller than they should be because the base rate would be *artificially low*.

The Union contested the Conciliator's award in court. The Union advanced the argument was that the Conciliator agreed with its position, but made a mistake when he wrote out the award. That is, he awarded three and one-half percent (3.5%) in the second year of the contract rather than the seven percent (7.0%) contained in the Union's final offer.

Conciliation under ORC 4117 is a final offer procedure. That is, the Conciliator cannot modify the parties' demands and must select one or the other in its entirety on each issue. Since the Union proposed a three and one-half percent (3.5%) lump sum

payment followed by a seven percent (7.0%) wage increase in the second year and a three and one-half percent (3.5%) payment in the third year and the City proposed a three and one-half percent (3.5%) increase in the first two years of the contract followed by a two percent (2.0%) increase in the third year, it is hard to understand how the Conciliator awarded three and one-half percent (3.5%) payments for three years.

Nonetheless, the City testified that the court upheld the Conciliator's award. The City contends that the Conciliator did not make a mistake and that he intended to follow the recommendation of the Fact Finder and award three and one-half percent (3.5%) in each year of the contract. The Union believes that the Conciliator agreed with its position and intended to award its final offer and that he made a mistake and awarded three and one-half percent (3.5%) in the second year rather than seven percent (7.0%).

The current Fact Finder has read the contested conciliation report numerous times and agrees with the City's position. It seems evident that the Conciliator believed that the City should pay three and one-half percent (3.5%) to the Union in each year of the contract. This is a total of ten and one-half percent (10.5%). The Union's demand was for fourteen percent (14%). There is nothing in either the original Fact Finder's report or the Conciliator's award based on that report that indicates that fourteen percent (14%) was ever considered. The entire discussion makes clear that the Conciliator believed that the Fact Finder's analysis was sound and that he was comfortable following the Fact Finder's recommendation(s). The fact that his award did not match either of the final offers seems to have been accepted by the Court based on either the entire record of the proceedings or equity considerations.

The preceding paragraphs should not be taken to mean that the Union's position is without merit. Because the lump sum payment is not included in the base rate, future wage increases will be marginally smaller than they appear. However, the three and one-half percent (3.5%) lump sum payment does mean that the communications coordinators did not go without a "wage" increase in 2004. Given the wording of 4117.14(G)(11), it was possible, perhaps probable that the communications staff would not receive a wage increase for 2004. Therefore, the benefits of a yearly increase, albeit an increase paid as a lump sum, must be weighed against the cost of having a smaller base rate.

The other issue that requires some explanation is the health insurance issue. This is a non-issue in some respects. The parties agree that the current first dollar coverage provided by the City to its employees will remain in effect for the life of the contract. The City has further stated that it intends to maintain the same coverage for as long as it can. The problem arises because the parties disagree on the method that they will use to put their agreement into writing. The Union wants the language specifying that the medical plan will not change left in the body of the agreement. The City wants to have the agreement attached to the contract as an addendum in a letter.

The City argues that its ability to keep the current first dollar plan in force depends on a number of factors. First, it must be willing and able to keep the plan in place. It is clear that first dollar coverage is becoming increasingly rare and not many jurisdictions are able to offer this plan. However, the City repeatedly stated that it intends to offer the plan for as long as it can afford the benefit. The second consideration is whether the City's insurance carrier will continue to offer a first-dollar coverage plan. The City testified that its insurance carrier was currently willing to offer a first dollar

coverage plan, but that the company questioned whether it would continue to offer the plan.

Consequently, the City argued that it would like to put the language relating to the health insurance plan in a side letter affixed to the contract. The City's contention is that it cannot be held responsible for continuing the plan if it cannot find an insurance carrier that offers the plan. Therefore, the City stated that it believes that language relating to the plan should not be included in the contract.

The Union disagrees with this conclusion. The Union stated that it did not know the specifics of the situation with regard to the insurance company. The Union also agreed that it did understand that first dollar coverage plans were now an exception to the general rule in which participants almost always are charged co-pays and deductibles. However, the Union believes that as long as the City continues to offer the same plan(s) that it has offered in the past the language in the contract should remain in force. Therefore, the Union does not want to take the current language out of the contract and place the details in a letter of understanding.

The issue will be discussed in detail in the body of the report. However, it is clear that both parties agree that the current insurance coverage will remain in effect for the duration of the proposed contract. Therefore, with regard to the current contract the issue is not pressing, and the communications coordinators as well as all City employees will continue to enjoy health insurance benefits that are superior to the benefits enjoyed by most other employees in jurisdictions throughout Ohio and the nation.

Issue: Article 20: Hours of Work

Union Position: The Union demands that all communications coordinators receive consecutive days off.

City Position: The City rejects the Union demand and wants to maintain the status quo.

Discussion: The issue between the parties relates to work schedules. There are eleven (11) communications coordinators in the bargaining unit. There is twenty-four hour coverage and the communications staff works three shifts. The first shift is from 7 A.M. to 3 P.M., the second shift runs from 3 P.M. to 11 P.M., and the third shift runs from 11 P.M. to 7 A.M. Each shift is manned by at least three (3) dispatchers. The parties agree that each shift needs three (3) coordinators for full coverage.

In any organization individuals call off because of illness, miss work because of scheduled time off, etc. Therefore, the City has two extra coordinators (floaters) to fill in if the regularly scheduled individual is unable to work his/her scheduled shift. If there are no absences, the floaters work a regularly scheduled shift and fill in where they are needed. The floaters desire to have consecutive days off. The Union testified that these individuals are at a disadvantage compared to other employees and that the lack of consecutive days off causes problems when trying to schedule family get-togethers, etc.

The City rejects the Union's demand because of the nature of the work done by the floaters. The City testified that it hired two extra communications coordinators because it knew that there would be times when a person would call off from work. Therefore, even though nine (9) communications personnel are needed to cover the scheduled shifts, the City hired eleven (11) coordinators because it believes that this is a more efficient way to provide communications services to the residents of Warren than

constantly calling in workers and paying overtime any time a regularly scheduled worker is absent. The City argued that if the floaters are not available for work because of restrictive schedules then there is no reason for keeping the two “extra” coordinators on the payroll.

The City also testified that the coordinators bid for their shifts according to seniority and that this means that the individuals in the floater positions will move into the regularly scheduled slots. In addition, the City also stated that the floaters did get two consecutive days off whenever there were no absences. There was no testimony about the number of times that the floaters actually had two consecutive days off.

This is a situation where the Fact Finder understands the Union’s position. A normal schedule in the United States is for five work days and two consecutive days off. Furthermore, the Fact Finder is sure that there would be any number of instances where a communications coordinator had to change (long standing) plans because he/she was forced to report for work to replace a sick colleague. However, the fact remains that the City has made a decision to overstaff the communications department in order to provide efficient, cost effective services to the residents of Warren. The City’s position that if the floaters are unavailable for work when they are needed, then there is no reason for the positions is compelling. If the floaters are not able to work when needed, then the City would be forced to call in workers whenever there was an absence. Furthermore, it would have two more communications coordinators than it needs.

ORC 4117 gives management the right to set schedules and determine manning levels. If the Union’s position is accepted, then the City would face a situation where it had an overstaffed department offering high cost services to the residents of Warren. The

City stated that it would have to consider eliminating two positions from the communications staff if the Union's position was accepted. Given the facts of the matter, the Fact Finder does not believe that the Union proved that there was any overarching reason to change the current system.

This is not to say that the Fact Finder is unsympathetic to the Union membership's demand. However, in order to make a recommendation to change a long-standing practice, a Fact Finder must be convinced that there is a compelling reason to change that practice. In this instance the Fact Finder is convinced that the current system does cause some problems to the communications coordinators who work as floaters. However, that inconvenience must be weighed against the fact that the City hired two extra personnel to work as floating employees, positions that might not be needed otherwise. Moreover, the current system is an efficient way to offer communications services to the residents of Warren. Given the entire record, the Fact Finder does not believe that the Union proved there is a reason to change the current system

Finding of Fact: *The Union did not prove that there was a compelling reason to change the current staffing in the communications department.*

Suggested Language: None.

Issue: Article 20: Hours of Work – Roll Call

Union Position: The Union demands a fifteen (15) minute roll call before the beginning of each shift.

City Position: The City rejects the Union's demand.

Discussion: The Union's demand seems to be based on the fact that other members of the police department have roll call language in their contract(s). The main justification for the demand is internal parity with other similarly situated employees. The Union also presented testimony that it was important for the communications staff to be abreast of ongoing operations when they came on duty so that they would not make mistakes because they were unaware of pertinent facts. For example, Linda Briach testified about a situation in which police officers were investigating a suspicious vehicle and found a long gun in the trunk of the car. She stated that the communications staff coming on duty was unaware of this fact and did not (could not) give information about the weapon to other officers who were enroute to the scene. She stated that this was very dangerous.

The City testified that other members of the police department were paid for attending roll call. However, the City's spokesperson also stated that roll call was an anachronism and had been in the police contracts for years. He said that the City did not believe that officers should be paid for roll call and that it performed no useful purpose. He stated that the department kept shift sergeants on duty during shift changes and that the sergeants gave the officers any information that they needed at the beginning of their shifts. Furthermore, he stated that many officers did not attend the roll call and simply got whatever information they needed from the sergeants. The Union agreed that attendance at roll call was less than 100% and that no one attended roll call every shift. However, the Union insisted that roll call was very important for the dispatchers and that the communications staff would attend roll call.

The first argument advanced by the Union in support of its position is a safety argument. That is, the communications staff argues that it is part of a team of police

personnel and that it is important that all team members be on the same page when dealing with potentially life threatening events. The question is really not philosophical but practical. That is, is there any evidence that a roll call would enhance the safety and operational efficiency of the department? There was no evidence that any problems had ever arisen because the communications coordinators did not have a roll call. The testimony proffered at the hearing showed that the formal and informal communications networks that have grown up in the department over the years work well and that personnel who are coming on duty do receive the information they need to do their jobs. There was no testimony that the current system leads to problems for the on duty patrolmen in performing their duty.

The second argument is parity. The communications coordinators believe that they should be paid for roll call because other police personnel are paid for roll call. Parity is an important consideration that a Fact Finder must consider when making recommendations. However, in this instance the parity argument has less probative value than is often the case. The testimony of both parties showed that the roll call language in the police contracts was carry-over language from many years ago. Moreover, the testimony also showed that the roll call often did not work as intended and discussions with the shift sergeants had become the mechanism for passing information about ongoing problems/investigations to officers reporting for duty.

Given the testimony in the record, the Fact Finder does not believe that the communications coordinators proved a need for roll call language. The current system seems to work well, and there was no testimony about any incident where the lack of a roll call adversely affected departmental operations.

Finding of Fact: The Union did not prove that a roll call would enhance departmental operations and/or the safety of the patrol officers.

Suggested Language: None.

Issue: Article 36: Miscellaneous – Uniform Allowance

Union Position: The Union is demanding an increase in the uniform allowance from \$400.00 to \$500.00. In addition, the Union is demanding that the uniform maintenance allowance rise to \$200.00 from \$150.00.

City Position: The City rejects the Union's demand(s).

Discussion: The Union's justification for this demand is somewhat unusual in the context of these negotiations. In general, the Union's main rationale for its demands is internal parity with other Warren safety forces. In this instance the Union uses external comparables to justify its demand and those data give a mixed message. The Union presented data from four other jurisdictions, and two (Euclid and Mentor) have uniform allowance payments of at least \$900.00. Measured by this standard, the allowance payment in Warren is low. However, the Union also presented data from Lakewood and Cuyahoga Falls, and these data show that these jurisdictions have uniform allowance payments of approximately \$525.00. Compared to these two jurisdictions, Warren's total payment of \$550.00 is reasonable. In addition, the Union testified that the communications coordinators' uniform allowance had not changed for a number of years.

The City argued that no other bargaining unit had been able to negotiate an increase in their uniform allowance and that there was no justification for the Union's demand based on internal parity. In addition, the City's spokesman stated that there was

really no need for the communications staff to wear a uniform. This latter point is somewhat beside the point. However, if the City changes the uniform requirements of the communications staff, then the need for a uniform allowance will be affected.

The Fact Finder does not find that the Union justified its position with regard to the uniform allowance payment. The data presented by the Union shows that there are other jurisdictions that pay an allowance similar to Warren. Moreover, the Union presented no data showing that there has been a significant change in the cost of uniforms that would necessitate an increase in the allowance. However, the Union did prove that there probably should be an adjustment to the uniform maintenance allowance. The City requires the communications coordinators to wear a uniform, and it pays some money toward the maintenance of that uniform. In this case the maintenance allowance has not changed for a number of years. The cost of cleaning and laundry has risen during that period.

The Union has demanded an increase of \$50.00 for the maintenance part of the uniform allowance. This figure seems justified by the evidence presented at the hearing. A \$50.00 increase leaves the Warren communications staff with a payment comparable to Lakewood and Cuyahoga Falls. In addition, the cost of the demand is minimal. Consequently, the Fact Finder believes that the Union met its burden of proof with regard to a change in the uniform maintenance allowance.

Finding of Fact: The Union's uniform maintenance allowance has been fixed while the costs of cleaning, etc. have risen.

Suggested Language: Article 36 – **Uniform Maintenance Allowance**

A uniform maintenance allowance of two hundred dollars (\$200.00) shall be paid to each member of the bargaining unit.

The allowance shall be paid as follows:

- 1) One hundred dollars (\$100.00) on the first pay of March.
- 2) One hundred dollars (\$100.00) on the first pay of September.
- 3) Retiring members of the bargaining unit shall receive a pro-rated amount based on the days employed during the year of retirement as part of their severance pay.
- 4) Employees shall have deducted a pro-rated amount of allowance for any period of unpaid leave of absence for a period of thirty (30) days or more.

Issue: Article New: Union Office

Union Position: The Union demands that the City supply furniture for the Union office.

City Position: The City rejects the Union demand.

Discussion: The original Union demand was for an office where the communications staff could conduct their business. The City agreed to allow the Union to use a storage room for its office, and the Union agreed with that proposal. The new office had some filing cabinets and an old desk, but no chairs. The Union demand is that the City provide some chairs for the membership so that they can use the office to conduct official business. The City states that it provided space for an office, but it does not believe that it should be responsible for furnishing the office. Therefore, the disagreement is over which side will put some chairs in the office.

This is an issue of first impression. There is no hidden agenda and the cost considerations to either side are minimal. It seems that the Union believes that other City bargaining units have furnished areas to conduct their business and that it should be treated in a similar manner. The City's position is that there is no reason that it should furnish the office.

The Fact Finder believes that the parties' disagreement on this issue is based on philosophical grounds and is more apparent than real. Nonetheless, the parties presented testimony on the issue during the hearing and asked for a recommendation.

Consequently, the Fact Finder is recommending that the City place a number of serviceable chairs in the Union office. The chairs do not have to be new and the City can take unused or surplus chairs from other offices or out of storage, etc. In addition, given the number of Union members, the City needs to provide only two or three chairs for the office.

Finding of Fact: The City should provide serviceable chairs for the Union office.

Suggested Language: None

Issue: Article 30 – Exemplary Attendance Award Bonus

Union Position: The Union demands the same attendance bonus language that is found in the Patrolmen’s contract.

City Position: The City agrees to pay the bonus, but wants language in the contract that requires a Union member to present a doctor’s excuse when he/she calls off work because of illness.

Discussion: The parties agree on the size of the bonus and the method of payment. The real disagreement is over the need to present a doctor’s excuse when calling off work. The Union argues that the City’s proposed language is not in the patrolmen’s contract and that there is no need to add it to the proposed contract between the communications coordinators and the City. The City countered this argument by introducing the firefighters’ contract, and that contract does contain the City’s suggested language.

The City claimed that there are two reasons that necessitate adding its suggested language to the contract. First, the City contended that once an employee called off work because of illness, then that employee’s sick leave use rises dramatically. That is, once

an employee cannot earn the bonus, he/she has no incentive to report for work. The City argues that its language requiring a doctor's certificate would ensure that the employee is sick when he/she calls off. Second, the City argued that under the Union's proposed language it is possible to receive that attendance bonus even if an employee is absent 100% of the time. That is, under the Worker's Compensation language in the contract, it is possible that City might have to pay an attendance bonus to someone who is off work because of an injury. This anomaly could arise because of the way that the Bureau of Worker's Compensation pays injured individuals. Therefore, the City claimed that its suggested language did not affect the bonus, but did ensure that the bonus was only paid to individuals who deserved it.

The City's arguments on this issue are reasonable. The City has a legitimate interest in making sure that sick leave is not abused. However, the requirement that an employee submit a doctor's excuse every time that he/she is absent is draconian. Almost no labor agreement requires a person to have a doctor's excuse for every day missed. There are many conditions which make a person sick enough to miss work, but not so sick that they must go to the doctor. For example a cold, the flu, an upset stomach, a twenty-four hour virus, etc., all might incapacitate a person for a day, but not necessitate medical attention. Consequently, most contracts require that any time a person calls off work for three consecutive days, that person must supply a doctor's slip.

The Fact Finder is recommending that language for insertion into the contract. If the City believes that there is a pattern of sick leave abuse, then the contract allows the City to investigate the matter and discipline any person who is abusing sick leave. Moreover, if a person is sick enough that he/she must call off on three consecutive days,

then he/she probably should see a doctor. If this language does not lead to a change in sick leave use, then the City should collect data and prove that the problem(s) with sick leave use still exist and try to modify the language in Article 30 during the next round of negotiations.

Finally, the Fact Finder is recommending inclusion of the City's language that closes the loophole that would allow a person out on Worker's Compensation to collect an attendance bonus. This eventuality seems hard to understand, but contract language often has loopholes that could be exploited by one side or the other. An attendance bonus is meant to be an incentive for a person to report to work. If it is possible that a person can receive the bonus and never report to work, then the language should be amended to reflect the views of the parties when they reached an agreement on the bonus language,

Finding of Fact: The parties agree on the size of the sick leave bonus and the method of payment. The suggested modifications to the language of Article 30 are intended to ensure that the bonus is not abused.

Suggested Language:

1. This payment shall be made on the last pay in May, September, and January respectively. The only days that a member can take off and still have perfect attendance are the benefit days for vacation, holidays, personal days, comp time, bereavement leave used for death of a member of the immediate family (i.e. spouse, parent, stepparent, child, stepchild, brother, sister, grandparent, grandchild, mother -in-law, father-in-law, brother-in-law, sister-in-law, daughter-in-law or son-in-law) and Worker's Compensation Wage Benefits paid on the day of injury.
2. To coincide with the paying of bonuses and reducing the need for overtime, a member must justify the use of more than two (2) consecutive sick leave days during any of the four (4) month periods by submitting a signed Medical Certificate or a satisfactory written, signed statement as approved by the Human Resources Department. Falsification of either a written, signed statement or a medical certificate shall be grounds for disciplinary action including dismissal. The City will provide the form.

Issue: Article 25 - PERS Pickup

Union Position: The Union demands that the City continue to pick-up the entire PERS payment.

City Position: The City agrees to continue to pick-up the current eight percent (8.0%) employee PERS payment. However, the City does not believe that it should be required to pick up future PERS rate increases.

Discussion: The question is whether the City should pay for future contribution increases mandated by the retirement system (PERS). The Union testified that the Fact Finder in the police negotiations recommended that the City pick up the entire payment. In addition, the parties agree that the retirement system has already announced contribution increases that will take effect over the next two years. Therefore, the Union argued that because the City had agreed to a full PERS pick-up, that it should live up to its agreement.

The City agrees that it currently picks up the entire payment. However, the City claims that it agreed to pick up an eight percent (8.0%) payment, not a ten percent (10.0%) payment. Therefore, the City argues that it should not have to pay the increases. The City agrees that the Fact Finder in the police contract agreed with the Union's position on the issue, but believes that the Fact Finder in the police negotiations make a mistake in his recommendation on this issue.

The current Fact Finder believes that the pick-up is part of the wage package. As such, it is an important issue to both parties. In this instance, the City has agreed over time to a full pick-up for all of its unionized employees. Furthermore, the City has agreed or neutrals have recommended that the City continue to pick up the entire amount

even in light of the fact that the payment will increase over the next few years.

Therefore, the communications coordinators are asking for a benefit enjoyed by other “similarly situated” employees. Given the fact that the City has agreed to the full pick-up for other employees and that no valid reason was advanced for treating the communications staff in a different manner than other employees, the Fact Finder believes that the communications coordinators should receive the same benefit as other City employees with regard to the PERS pickup.

Finding of Fact: Other unionized City employees enjoy a full PERS pick-up.

Suggested Language: PERS Pick-up

Effective January 1, 2007, the City shall pay the entire nine and one-half percent (9.5%) PERS employee obligation to the State of Ohio. Effective January 1, 2008, the City shall pay the entire ten percent (10%) PERS employee obligation to the state of Ohio.

Issue: Article 31 – Health Care Benefits

Union Position: The Union demand is that the health care plan and the health care language currently in the contract remain unchanged.

City Position: The City wants to place some of the health care language in a letter of understanding attached to the contract.

Discussion: Note: for a preliminary discussion of this issue see the Introduction to this report. Additionally, the parties discussed the issue and came to an understanding on the specifics of the plan during the hearing. These agreements are included by reference in this recommendation.

The question is whether the health care language should remain in the body of the contract or be contained in a letter of understanding affixed to the document. The usual reason for placing a letter of understanding in the agreement is to 1) make explicit an

agreement that does not fall within the confines of a specific article within the agreement, or 2) explain the understanding of the parties with respect to an issue that is within the bounds of the agreement but which has some unusual feature or past practice. This is an example of the second factor. In this case the City argues that it will continue to provide first dollar medical coverage for as long as possible. However, the City testified that the insurance company would not guarantee that a first dollar coverage plan would continue to be offered. In effect, first dollar coverage plans are disappearing, and the cost of providing a unique plan for a single employer may become prohibitive. Consequently, the City believes that it cannot continue to guarantee that the current plan will remain in effect.

The Union wants to protect its membership, and the usual language with regard to medical plans states that the employer will continue to offer the same or substantially the same coverage for the life of the agreement. The Union wants this language to remain in place. The problem is that any plan that might eventuate will be substantially worse than the plan now in effect. The Union understands this problem, but still wants to keep the current language in the contract.

It is settled in labor law that if the terms of a contract clause are changed during the life of an agreement, then the parties must negotiate over the effects that any changes in the clause have on the bargaining unit. Therefore, it is often easier to change contract language during negotiations rather than during the term of the agreement.

Consequently, an employer can change insurance carriers, etc., during the life of an agreement, but then the employer must sit down and negotiate with the employees about the effects of any changes, and the Union's desired language protects its membership if

the City does change plans. If the City cannot continue to provide the same insurance coverage because the current plan is no longer offered, this would be a valid reason for changing the plan. Regardless, the Employer and the Union must negotiate over the changes.

Given the law regarding changes in contract clauses during the life of an agreement, the question of whether or not the language in question is contained in the body of the agreement or as an appendix to the agreement is of little consequence (depending on the wording of the Employer's proposed letter). If either the insurance company or financial considerations force the Employer to modify the plan, then negotiations and the grievance procedure will be the tools the parties will use to settle any differences in their positions.

The usual default position in collective negotiations is the status quo. In this instance, the status quo may not be the best solution. The Fact Finder is recommending that the understanding between the parties be memorialized in a letter of understanding attached to the contract. However, there is a proviso with this recommendation. The Fact Finder also is recommending that the letter contain explicit language stating that differences in the parties' views on any changes is subject to the grievance procedure. Hopefully, the current health care plan will remain in effect through the term of the agreement. If that is not the case, then the parties can use the grievance procedure to iron out any differences in their understanding of the proposed changes.

Finding of Fact: The City does not have complete control over whether it will be able to continue to offer a first dollar health care plan, and language in the agreement that

requires that the City offer the same or a similar plan is unreasonable given the circumstances. Any changes in the policy should be covered by the grievance procedure.

Suggested Language: A letter of understanding crafted by the parties concerning the current first dollar health plan.

Issue: Article 24 – Pay Rates

Union Position: The Union is demanding an annual increase of seven percent (7.0%) in the first year, three and one-half percent (3.5%) in the second year, and three and one-half percent (3.5%) in the third year.

City Position: The City is offering a one and one-half percent (1.5%) increase in each year of the proposed contract. The City also claims that any change in the PERS pickup amount, if recommended by the Fact Finder, will cost an additional one and one-half percent (1.5%) over the life of the agreement.

Discussion: The difference in the pay provision is the most contentious issue between the parties. The Union is adamant that the conciliation report from the last negotiation was mistaken and that the Conciliator intended to award its position. That is, the Union contends that its membership lost a three and one-half percent (3.5%) pay raise during the last negotiation. Therefore, the Union demand is for three yearly three and one-half percent (3.5%) increases with a three and one-half percent (3.5%) catch-up payment. The Union argues that it is actually asking for ten and one-half percent (10.5%) over three years. The justification for the demand is internal parity. The communications staff argues that the other safety forces have received raises of this magnitude when changes in the total economic package(s) are evaluated. That is, some units received less than ten

and one-half percent (10.5%) but when PERS payments, etc. are factored into the equation, then the total value of the economic package is in excess of ten percent (10.0%).

The City argues that its offer is realistic given both the economic position of the communications staff compared to other dispatchers and the history of wage agreements between the parties. The City stated that the coordinators received a PERS pickup as a tradeoff for a pay raise during a prior negotiation before other City employees negotiated the pick up into their agreements. Consequently, the City's position is that the communications staff's pay is not deficient when the entire pay history is considered. The City also argued that its financial position might deteriorate in the near future because of uncertainty surrounding the continued financial health of the General Electric lamp production facility and the Delco plant. Finally, the City argued that the Conciliator in the previous negotiation did not make a mistake and that the Union was trying to gain an extra three and one-half percent (3.5%).

The Fact Finder discussed the conciliation report that is the basis for much of the disparity in the parties' positions in the Introduction to this report. The Fact Finder believes that the Conciliator found that the Fact Finder in the previous round of negotiations made a reasonable recommendation. He attempted to implement that recommendation by giving the communications staff three and one-half percent (3.5%) lump sum payment. The lump sum payment coupled with the second and third year raise that he awarded equaled the amount recommended by the Fact Finder. Of course, since conciliation is a final offer process, the award did not match either of the parties' final

offers and therefore was subject to misinterpretation. That led to the current belief by the Union that its membership lost a three and one-half percent (3.5%) base rate increase.

It is true that the Union's base rate is three and one-half percent (3.5%) less than it would otherwise be. The Union membership received a lump sum payment, but their base rate did not change. However, the Union's suggested remedy essentially would award the communications staff an extra three and one-half percent (3.5%).

Over time there will be some compounding effect caused by the fact that the communications staff did not receive a base rate increase but a lump sum payment; however, that effect will be minimal. Regardless of any other fact, the current Fact Finder believes that the Conciliator's award was what he intended and cannot be used as a justification for a catch-up base rate increase. Therefore, the prior conciliation award will not be a factor in the wage recommendation.

The City presented evidence that the AFSCME bargaining unit came to an agreement that pays its members one and one-half percent (1.5%) per year over the life of their contract. Similarly, the firefighters settled for two percent (2.0%) per year in their agreement. However, the parties testified that these units were also receiving an increase in the PERS pickup and the value of their total agreement is greater than just the wage increase numbers indicate.

The City stated that the only units that have not settled for wage increases around two percent (2.0%) per year are the police units. These units are currently using the dispute resolution procedures found in ORC 4117 to finalize their wage bargains. The Fact Finder for the Gold Unit recommended wage increases of three percent (3.0%), three

percent (3.0%), two percent (2.0%), and a four percent (4.0%) PERS pickup. The City rejected the Fact Finder's recommendation and the parties are preparing for conciliation.

The City's finances assume a central position in any recommendation made by the Fact Finder. It is clear that the City is facing uncertainty about its economic future. The City's Tax Administrator Tom Gaffney testified that the General Electric Plant's future was uncertain because the product manufactured in the facility was obsolete. However, any statements about the plant were speculative because General Electric had made no statements about its future plans. Regardless, the City contends that it must be prepared for the worst. Similarly, the Delco plant in Warren has already offered a buyout; and given the problems facing Delco, the City believes that it must prepare for an eventual shutdown or a significant decline in employment at the plant. Therefore, the City stated that it must hold down costs because its two major employers are facing economic problems. In addition, the City argues that its medical plan is very generous and that it cannot pay for first dollar medical coverage and the Union's wage demands.

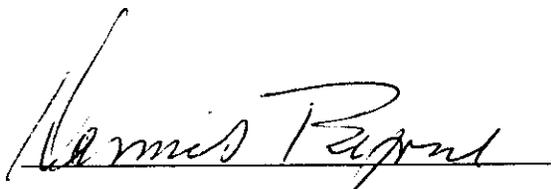
It is clear that the City faces an uncertain economic future. However, at this time the City's finances are in reasonable condition and the City never raised an inability to pay argument. Therefore, the Fact Finder believes that the wage recommendation must be reasonable given the uncertain economic condition, but must also be realistic given the fact that currently the City is in reasonably sound financial condition. Considering all of the evidence, the Fact Finder is recommending two and one half percent (2.5%) for each year of the proposed agreement. This amounts to nine percent (9.0%) over three years when the PERS pickup payment is included in the calculations.

The Fact Finder understands that this is less than the Union desires and is more than the City offered. However, given all of the facts in the record, the Fact Finder believes that it is a reasonable recommendation based on the City's finances and the Union's position vis-à-vis other City employees.

Finding of Fact: The City's financial position does not preclude paying a reasonable raise to the communications coordinators.

Suggested Language: The pay rates in Article 24 shall be amended to show a two and one half percent (2.5%) per year wage increase for each year of the prospective contract. In addition, the City shall pay a PERS pickup equal to ten percent (10.0%) of the employees base rate. This is an increase of one and one-half percent (1.5%) of the communications coordinators base rate.

Signed this 18th day of April 2007, at Munroe Falls, Ohio.

A handwritten signature in cursive script, reading "Dennis M. Byrne", written over a horizontal line.

Dennis M. Byrne, Fact Finder